IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13423 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PADMAVATI WD/O BHAILAL GHELABHAI AMIN - Petitioner(s)

Versus

THE COLLECTOR OF KHEDA & 1 - Respondent(s)

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Appearance :
MR NITIN M AMIN for Petitioner(s) : 1,
MR PR ABICHANDANI Ld. AGP for Respondent(s) : 1,
None for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 20/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Mr. PR Abichandani ld. AGP waives service of

rule on behalf of respondents. At the request of ld. Advocates for the parties, the matter is taken up for final hearing today.

The petitioner is the owner of land bearing survey no. 602 and 1535 at Mahudha, District Kheda, admeasuring 1.4 hectors. Part of the land bearing survey no. 1535 admeasuring 16.32 gunthas has been acquired by respondent no. 2 under the provisions of the Land Acquisition Act ('the Act' for short) for building a canal of Narmada Project. In pursuance of the said acquisition, possession of the land has also been taken. It appears that the petitioner had not preferred any application under sec. 18 of the Act for making reference to the District Court, however, other similarly situated land owners had preferred application for making reference under sec. 18 of the Act to the District Court for increase of the rate of compensation which was granted by the District Court substantially. In view of the same, the petitioner also submitted subsequently an application under sec. 28A(1) of the Act to respondent no. 1 who decided it and made award in accordance with sub-section (2) of Sec. 28A on 16.5.2002 and paid Rs. 82,706/- to the Power of Attorney Holder of the petitioner vide cheque no. 325164 dated

6.5.2004. The petitioner, however, was not satisfied with the amount of compensation awarded to her and she preferred application under sec. 28A(3) of the Act to respondent no. 1 who rejected it by his order dated 4.2.2005 on the ground that the petitioner had not accepted the award under protest. Having been aggrieved by the said order, the petitioner has approached this court by way of this petition. It is the say of the petitioner that the ground relied on by the Collector i.e. Respondent no. 1 to reject the application is factually incorrect since the petitioner had, in writing, objected to the amount of award and its acceptance. Further, it is submitted by Mr. Nitin Amin Ld. Advocate for the petitioner that, even in law, the order of the Collector is erroneous, since by now, it is a settled principle of law that irrespective of the nature of the acceptance of the award, the reference has to be made by the Collector if application is made under sec. 28 of the Act. In support of his contention, he has placed reliance on the decision of the Apex Court rendered in the case of **Union of India and Anr. vs. Hansoli Devi and Ors., reported in (2002)7 SCC p. 273.** The Apex Court held as under:

> “As regards Question 2, it must be held that if a person has not filed an application under sec. 18 of

> the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collector with or without protest, he would be a person aggrieved within the meaning of Sec. 28-A and would be entitled to make an application when some other landowner's application for reference is answered by the reference court."

He has also placed reliance on the decision of the Apex Court rendered in the case of **Ajit Singh and Ors. vs. State of Punjab and ors., reported in)1994)4 SCC p. 67.** In the said decision also, the Apex Court has held in para-5 thereof, as under:

> "5. Having regard to the contiguity of these lands the High Court is correct in its valuation. Besides, the date of notification, issued under Section 4 of the Act, is October, 4, 1978 while Exh. R-6 is nearer to it, namely, August 16, 1978, in comparison to Exh. A-6 dated January 14, 1977. Inasmuch as the appellants have filed an application for reference under Section 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The District Judge and the High Court, therefore, fell into patent error in denying the enhanced compensation to the appellants."

Mr. Abichandani ld. AGP is not able to controvert the position of law pleaded by Mr. Nitin Amin. In view of the same, it clearly appears to us that the ground on which the application has been turned down by respondent no.1 – Collector is not proper and the said order is

required to be quashed. It is, therefore, quashed and set aside. Respondent no. 1 – Collector is, now directed to make appropriate reference to the Court for its determination on the basis of application dated 11.6.2004, which is at page 45 of the compilation of the petition, as Annexure-H, to the concerned Court. Rule is made absolute with no order as to costs.

(KSHITIJ R. VYAS, J.)

(AKSHAY H. MEHTA, J.)

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